



**THE ATTORNEY GENERAL
OF TEXAS**

**WAGGONER LARR
ATTORNEY GENERAL**

**AUSTIN 11, TEXAS
April 5, 1965**

Honorable Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Opinion No. C-414

Re: Whether a department
of State government
must furnish the bond
required by Article
10.10(1) of persons
who make remittances
or payments of special
fuels taxes directly
to this State.

Dear Mr. Calvert:

We quote the following from your letter requesting the
opinion of this office on the above captioned question.

"We desire the opinion of your office
as to whether or not a department of
State Government will be required to
furnish the bond required by Article
10.10(1) by the Special Fuels Tax Law
of persons who make remittances or pay-
ments directly to this State of taxes
incurred upon the use of special fuels.

"For example: the Texas Department
of Corrections is now engaged in the use
of special fuels (diesel fuel) pre-
dominantly to operate tractors and other
equipment off the public highway but
with lesser quantities used to operate
diesel trucks upon the public highways,
which operation by private persons
would require a bonded user permit and
the payment of taxes directly to the
State.

"There is no exemption from the tax
on the highway use of special fuels or
motor fuel accorded by these laws, . . .

". . .

"The Comptroller has requested
counties, cities and other political

sub-divisions of State government to furnish the bond if they purchase and use special fuels in a manner that requires a bond of others. This policy was influenced by Attorney General Opinion O-2305, in which it was held that a political subdivision of State government is required to furnish the bond required by Article 4365, V. A. C. S., to receive a duplicate of a warrant issued to such applicant which has thereafter become lost.

"This is the first application this Division has received from a department of State government for a permit for which the law provides that a bond shall be furnished, and the Texas Department of Corrections has advised that it has no appropriation for the payment of the premium to a surety company should a bond be required.

"Will you, therefore, please advise this Department whether it can issue a permit classified by law (Art. 10.11) as a bonded user's permit to the Texas Department of Corrections and waive the bond required by the law?"

Section (1) of Article 10.10, Title 122A, Chapter 10, Vernon's Civil Statutes, which we deem determinative of the question under consideration, reads as follows:

"Every person who is authorized by permit or required by law to make remittances or payments directly to this State of taxes collected upon the sale or delivery of special fuels or of taxes incurred upon the use of said products shall file with his application for permit a bond in an amount to be set by the Comptroller at not less than three (3) times the amount of taxes that will accrue or may be expected to accrue during any month of the calendar year, but which bond shall never be less than

One Thousand Dollars (\$1,000) if
filed by a supplier nor less than
Five Hundred Dollars (\$500) if filed
by a dealer or user.

"Every such bond shall be executed by a surety company authorized to do business in this State, payable to the State of Texas, and shall remain in force from the date it is made effective to the end of the calendar year, unless released by the Comptroller as herein provided. Such bond shall be conditioned upon the full, complete, and faithful performance by the person for whom it is issued of all of the conditions and requirements imposed on said person by this Chapter, or by rules and regulations promulgated by the Comptroller, and shall expressly guarantee the remittance or payment to the State of Texas within the time prescribed by law of all taxes, penalties, interest, and costs required herein to be remitted or paid to this State by said person. Any such bond which is continuous in form may be continued in effect for a succeeding calendar year by a renewal certificate, which certificate shall have all the force and effect of an original bond."

"Person" is defined in Section (9) of Article 10.02 as follows:

"'Person' means every individual, firm, association, joint stock company, syndicate, partnership, copartnership, corporation (public, private, or municipal), trustee, agency or receiver."

We do not think that the Texas Department of Corrections can be deemed an "agency" within the contemplation of the definition of "person" above quoted. We further think that the provision of Section (1) of Article 10.10 which requires that a bond shall be issued by a surety company and made payable to the State of Texas demonstrates that the Legislature never intended that a Department of the State Government would be required to secure bond made payable to, in effect, itself. The result would be that the Government, or more

specifically a Department thereof, would be expressly guaranteeing the remittance or payment to itself of all the taxes, penalties, interest and costs required under the provision of the Special Fuels Tax Act. Additional evidence of this lack of Legislative intent lies in the fact that no appropriation has been made by the Legislature for the payment of a bond premium.

You are therefore advised that in the instant case you may issue the permit classified by Article 10.11 as a bonded user's permit without requiring a bond.

S U M M A R Y

The Texas Department of Corrections, a department of the State government, need not furnish the bond required by Article 10.10(1) in order to receive a permit classified by Article 10.11 as a bonded user's permit.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By: 
Marietta McGregor Payne
Assistant

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APPROVED:
OPINION COMMITTEE

W. V. Geppert, Chairman
Frank Booth
John Banks
Gordon Houser
Robert Norris

APPROVED FOR THE ATTORNEY GENERAL
By: Stanton Stone